IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

Crl.MC.No. 447 of 2007()

MC.11/2002 of JUDL.MAGISTRATE OF FIRST CLASS, MANANTHAVADY
CRRP.32/2003 of ADDL. SESSIONS COURT (ADHOC), KALPETTA

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PETITIONER:

PALLITHOTTUKA ABDUL AZEEZ,
AGED 56 YEARS,
THAZHE MUTTIL, POST KOOTTIL,
MUTTIL.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.T.P.SAJID

RESPONDENTS:

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1. KADANNOLI AYSHA,
AGED 45 YEARS,
D/O. KUNHABDULLAH,
POST VELLAMUNDA.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 447 of 2007

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Dated this the 21st day of February, 2007

O R D E R

The petitioner assails a revised direction issued under Section 3(1) of the Muslim Women (Protection of Rights on Divorce) Act in this petition under Section 482 Cr.P.C.

2. Marriage is admitted. Divorce is also admitted. That no amount has been paid under Section 3(1) of the Act is also without dispute. The courts below concurrently came to the conclusion that the petitioner is liable to pay amounts to the claimant/divorced wife as maintenance during the period of Iddat and as reasonable and fair provision for the future. While the learned Magistrates quantified the amount at Rs.42,500/- (i.e. Rs.1,750 x 3 as maintenance during the period of Iddat and Rs.40,000/- being consolidated amount of reasonable and fair provision), the learned Sessions Judge indulgently modified and reduced the quantum which is liable to be paid. Taking into account all the circumstances, the learned Sessions Judge held that an amount of Rs.1,500/- (500 x 3) as maintenance

during the period of Iddat and an amount of Rs.25,200/- (7 years x 12 months x 300) will be fair and reasonable.

3. The petitioner has come to this Court to assail the said modified direction. It is contended that no amount should have been directed to be paid at all considering the means of the petitioner and state of his health. At any rate, the quantification is perverse, it is further contended.

4. I must alertly remind myself of the nature, quality and contours of jurisdiction of this Court when challenge is raised against the concurrent finding that the petitioner is liable to pay amounts under Section 3(1) of the Act. Jurisdiction under Section 482 Cr.P.C. is an extra ordinary inherent jurisdiction. Has there been failure/miscarriage of justice? This is the mantra to be followed by Court. Errors committed in facts or in the appreciation of evidence will not persuade this Court to interfere with the concurrent finding that the petitioner is liable under Section 3(1) of the Act. The crucial question to be considered is, has there been failure of justice?

5. It was a unilateral divorce after about 18 years of marital life, though the petitioner would urge that it was at the instance of his wife that he agreed to divorce her. No specific material to that effect is available. It

is also not disputed that the claimant/divorced wife, a woman in her 40s, remains unmarried even now. It is also not disputed that the petitioner has got remarried promptly after the divorce. There is no material to show that either party has any landed property. The claimant wife admittedly has now taken shelter with her son in the previous marriage of hers. The children born in the wedlock between the claimant and the petitioner are admittedly residing now with the petitioner.

6. The rival contestants made assertions about the means. Specific evidence of tangible means was not available. The learned Magistrate and the learned Sessions Judge took note of the broad probabilities. The children living with the petitioner and the newly married wife of the petitioner are obviously looking into the petitioner for support. There is no tangible evidence for this. The counsel contends that it is puerile to assume from those circumstances that the petitioner has any means. The court cannot sit in an island oblivious to realities of life. Section 114 of the Evidence Act permits and obliges the court to make prudent assumptions and presumptions of fact. In the totality of circumstances, which are available in this case, according to me, it would be perverse for any court or any prudent mind to assume that the petitioner is a person without any

means. The circumstances which I have referred to earlier, notwithstanding the fact that there is no tangible evidence, conclude that the petitioner is not a person without means. It would be imprudence of the worst variety in the circumstances of the case to lightly assume that the petitioner who voluntarily embraced the additional responsibility of a subsequent marriage without any means. In these circumstances I am unable to agree that the court below committed any error in making that assumption.

7. The counsel assails the quantum fixed at Rs.500/- p.m. as maintenance during the period of Iddat and Rs.300/- p.m. while attempting to quantify the lump sum amount payable as equivalent to 7 years maintenance. The quantification made and the principles adopted do appeal to me, in the circumstances, to be absolutely reasonable and do not, at any rate, persuade me to invoke the extra ordinary inherent jurisdiction to interfere with such finding of fact and quantification. The quantum fixed, according to me, is modest, cogent, reasonable and consistent with the indisputable facts available in this case.

8. The learned counsel for the petitioner then contends that the claimant has the option of approaching her possible legal heirs and the Wakf Board for maintenance under Section 4 of the Act. Those provisions

deal with the unfortunate situation when a woman having obtained the amounts under Section 3 still finds her to be unable to maintain herself later. It will be imprudent and perverse to assume that the stipulations in Section 4 are sufficient to displace or reduce the liability of the husband under Section 3. The compassion of the law in favour of a woman, who having obtained the lump sum amount under Section 3(1) already, becomes disentitled to the benefit of Section 125 Cr.P.C. under Section 127(3)(b) Cr.P.C. to claim maintenance and who remains unmarried and is liable to maintain herself is reflected in Section 4. That safety valve provided for the impecunious wife to go with a begging bowl before her possible legal heirs or the Wakf Board cannot at any rate be a defence for the husband to a claim under Section 3 either for absolution or for mitigation. In any view of the matter, I am satisfied that the impugned order does not warrant interference.

9. This Crl.M.C. is hence dismissed.

(R. BASANT)
Judge

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